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No. 02-680

**In the**
**Supreme Court of The United States**

PATRICK C. ENGLISH and THE BOARD OF EDUCATION OF THE BOROUGH OF LINCOLN PARK,
Petitioners,

v.

THE BOARD OF EDUCATION OF THE TOWN OF BOONTON and WILLIAM L. LIBRERA, COMMISSIONER OF EDUCATION,
Respondents.

On Petition for a Writ of Certiorari To the United States Court of Appeals for the Third Circuit

# Brief in Opposition on Behalf of Respondent, William L. Librera, Commissioner of Education

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY
R.J. HUGHES JUSTICE COMPLEX
P.O. Box 112
Trenton, NJ 08625
(609) 633-8197

NANCY KAPLEN
Assistant Attorney General
Counsel of Record

Sarah G. Crowley
Deputy Attorney General
On the Brief

## COUNTER STATEMENT OF QUESTIONS PRESENTED

1. Whether the one person, one vote principle is applicable where one school district enters into a contract (the sending district) to send its high school students across geographic boundaries to another school district (the receiving district) for educational services for these students.

2. Whether N.J.S.A. 18A:38-8.2, which permits a sending school district to have one school board member on a receiving district's school board where the sending district has a greater general and student population is unconstitutional as applied under the one person, one vote principle.

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## COUNTERSTATEMENT OF THE CASE

## I. INTRODUCTION

The instant matter involves the boards of education of two public school districts, Lincoln Park and Boonton, which are engaged in a send-receive relationship. Pursuant to this relationship, Lincoln Park has a contract with Boonton and sends its high school students to Boonton High School for instruction. In return, Lincoln Park pays tuition to Boonton. This relationship was voluntarily entered into by the two school districts over 50 years ago. Pursuant to State law, Lincoln Park is permitted to have one representative on the Boonton Board of Education to vote on high school issues. N.J.S.A. 18A:38-8.2.

The petitioner in this action, Patrick English, is a resident and tax payer who lives in Lincoln Park, the sending district. Petitioner sought to have N.J.S.A. 18A:38-8.2 declared unconstitutional, "as applied" on the ground that Lincoln Park residents are being deprived of adequate representation on the Boonton Board of Education for high school issues in violation of the federal constitutional principle of "one person, one vote." Lincoln Park students constitute 52% of the Boonton High School population and Lincoln Park's population as a whole amounts to 56% of the combined populations of the towns.

The New Jersey Legislature requires public school districts to educate all students domiciled within their district. N.J.S.A. 18A:38-1. Pursuant to this authority, districts without high schools (sending districts) may contract with schools outside of its boundaries for its students to attend. The "consent" of the school district receiving these students (the receiving district) is an essential component of this relationship. In addition, the sending district must pay tuition to the receiving

school district for each student sent. N.J.S.A. 18A:38-19. The statute further provides for limited representation by the sending district on the receiving district board of education.

Pursuant to N.J.S.A. 18A:38-8.2:

> A school district which is sending pupils to another school district pursuant to N.J.S.A. 18A:38-8 shall have representation on the board of education of the receiving school district as follows:
>
> a.(1) If the pupils of the sending district comprise less than 10 percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending district will be enrolled, the sending district shall have no representation on the receiving district board of education.
>
> (2) If the pupils of the sending district comprise at least 10 percent of the total enrollment of the pupils in the grades of the receiving district in which the pupils of the sending district will be enrolled, the sending district shall have one representative on the receiving district board of education.

Once a send-receive relationship is established, it may only be ended pursuant to N.J.S.A. 18A:38-13. This statute, which was enacted in substantially the same form in 1933, but amended in 1944, 1956, 1967 and 1986, provides that before the relationship may be severed, a feasibility study as to whether severance will be allowed must be conducted and submitted to the Commissioner of the Department of Education who will

> make equitable determinations based upon consideration of all the circumstances, including educational and financial implications for the affected district, the impact on the quality of education received by pupils, and the effect on the racial composition of the pupil population for the districts. N.J.S.A. 18A:38-13.

It is important to note, that up to this time, Lincoln Park has never sought to sever its relationship with Boonton.* If such a severance application had been submitted, an administrative process would have been instituted. As described above, this process includes the submission of a feasibility study, and a determination by the Commissioner.

## II. PROCEDURAL HISTORY

The Petitioner filed a complaint in New Jersey District Court on or about November 1, 2000 seeking to have N.J.S.A.18A:38-8.2 declared unconstitutional, "as applied," on the ground that Lincoln Park residents are being deprived of adequate representation on the Boonton Board of Education in violation of the federal constitutional principle of "one person, one vote."

The State filed a motion to dismiss under Fed. R. Civ. P. 12(b)(6). The petitioner filed a cross-motion for summary judgment. The parties agreed that there were no material facts

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*Contrary to Petioner's assertion in their Brief at p. 4, it was never conceded that there would be a substantial negative educational and economic consequence to severance. A feasability study was not conducted by either district and the Commissioner never rendered an opinion on this matter.

in dispute and the State consented to convert its motion to a motion for summary judgment.

On March 26, 2001, the District Court determined that the challenged New Jersey statute is unconstitutional, as applied. The court, finding that jurisdictional barriers did not estop the principle of one-person, one-vote applying in this case, reasoned that the "citizens of Lincoln Park have a fundamental interest in the education of their students and in proportionate representation on the Boonton Board." English v. Board of Ed. of the Town of Boonton, et al., 135 F. Supp. 2d 588, 594 (D.N.J. 2001).*

On September 6, 2001, the Boonton Board of Education filed a notice of appeal of the District Court's decision. On September 7, the state defendant also filed a notice of appeal. Defendant Boonton Board of Education, sought a stay of the remedy imposed by Judge Hochberg which was joined by the state defendant. This stay was denied on September 10, 2001. On September 21, 2001, the Third Circuit Court a Appeals granted a Stay of the District Court's decision pending appeal.

On August 2, 2002, the Third Circuit Court of Appeals reversed the district court and held that "valid geography-based restrictions on voting do not offend the principle of one person, one vote." English v. Board of Education of the Town of Boonton, 301 F. 3d 69, 72 (3d Cir. 2002). The court further found that such restrictions are not subject to a strict scrutiny

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*Prior to Judge Hochberg's decision in the instant case, the Honorable Anne E. Thompson, U.S.D.J. had found the same statute unconstitutional as applied under the Equal Protection Clause principle of the one person, one vote in The Board of Education of the Township of Branchburg, et al v. David Livingston, et al, Civil No. 98-557 (September 7, 2000). This case is currently on appeal to the Third Circuit Court of Appeals.

standard and must only bear some rational relationship to a legitimate state purpose. In reaching this conclusion, the Third Circuit Court of Appeals relied upon Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 74 (1978) wherein this Court held that "a government unit may legitimately restrict the right to participate in its political process to those who reside within its borders." The Petitioner filed a Petition for Writ of Certiorari on October 31, 2002.

## ARGUMENT

### PETITIONER HAS FAILED TO MEET THE STANDARDS FOR A GRANT OF CERTIORARI BECAUSE THERE IS NO TENSION BETWEEN PRIOR SUPREME COURT PRECEDENT AND THERE IS NO NEED FOR CLARIFICATION OF THE DECISION OF THE THIRD CIRCUIT COURT OF APPEALS

Petitioner seeks review of the Court of Appeals Opinion and Order of August 2, 2002, 301 F. 3d 69 (2002), pursuant to 28 U.S.C. Section 1254. Under this standard, however, certiorari may be granted where "a United States court of appeals is in conflict with prior Supreme Court decisions." First Nat. Bank of Ariz. v. Cities Service Co., 391 U.S. 253 (1968). As the discussion below demonstrates, petitioner has failed to demonstrate that there is any tension between prior Supreme Court precedent or that the Third Circuit Court of Appeals erred.

Petitioner's sole contention is that the case of Hadley v. Junior College District of Metropolitan Kansas City, 397 U.S. 50 (1970) should control this case. This contention is predicated exclusively upon the fact that the district court below relied upon this case in finding for the petitioner. However, as the Third Circuit Court of Appeals correctly held, although Hadley requires equality among eligible voters, one person, one vote jurisprudence recognizes that certain restrictions on voter eligibility are valid. Specifically, when a municipality exercises extraterritorial powers over individuals outside of its boundaries, valid geographic restrictions on voting do not offend the principle of one person one vote. Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60 (1978). Thus,

there is no tension or conflict between Hadley and Holt. Holt applies to a multi jurisdictional case such as the two school districts in this case and Hadley when a single district is involved.

The case of Hadley v. Junior College District of Metro Kansas City, 397 U.S. 50 (1971) involved a single voting jurisdiction, i.e. a junior college district comprised of several school districts, whose residents were entitled to vote for the members of a board of trustees charged with operating the schools of the junior college. The voters were residents not only of the local school district but the junior college districts as well. Hadley, supra, 397 U.S. at 52.

A declaratory judgment action was filed in Hadley challenging the constitutionality of the method prescribed by the statute for election of trustees of the college. The statutory scheme permitted more voting power for some of the smaller districts, because the voting scheme was based upon the number of persons who resided in a district. This Court held that the voting scheme, which discriminated against the voters in the more populous school districts which comprised the junior college districts violated the one person one vote principle. Hadley, supra, 397 U.S. 50, 61 (1971).

Hadley and its progeny were properly interpreted as endorsing the one person, one vote concept where a single district is involved. However, the court properly noted that the two school districts in this case are not a single district and are not analogous to the single district found in Hadley. English, supra, 301 F. 3d. at 77-78. Rather, the board members in this case are each elected by the voters in their separate jurisdictions. As such, the facts in Hadley are not applicable, and the case of Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60 (1978) is controlling. There is no conflict between

these two cases – one involves a single voting jurisdiction and the other a multiple voting jurisdiction.

In Holt v. City of Tuscaloosa, 439 U.S. 60 (1978), this Court expressly recognized geographical boundaries limit the application of the one person, one vote principle. This Court in Holt addressed the constitutionality of an Alabama statute that subjected Holt, an unincorporated community on the outskirts of the city of Tuscaloosa to the city's police jurisdiction. Holt was subjected to Tuscaloosa's police and sanitary regulations and the primary jurisdiction of the Tuscaloosa court, as well as the city's power to license businesses, trades and professions. However, the statute did not entitle Holt residents to vote in Tuscaloosa's elections.

In concluding that the scheme in Holt was constitutional, this Court distinguished other cases, including the Hadley case on the grounds that those cases involved a violation of the one person, one vote principle where the voting franchise had been denied "to individuals who were physically residing within the geographic boundaries of the governmental entity concerned." Holt, supra, 439 U.S. at 68. See e.g. Baker v. Car, 369 U.S. 186 (1962); Reynolds v. Sims, 377 U.S. 533 (1964); Evans v. Cornman, 398 U.S. 419 (1970); Little Thunder v. South Dakota, 518 F. 2d 1253 (8th Cir. 1975)(all involving a single voting jurisdictions).

The Third Circuit Court of Appeals agreed with the appellants in applying Holt to the instant case. The court rejected the appellees' argument that Boonton and Lincoln Park comprised only "one voting district" for high school issues. The court reasoned that the residents of Lincoln Park do not reside within the geographic district that is responsible for electing the members of the Boonton Board. Accordingly, the court held

that the Boonton Board, "merely exercises extraterritorial power over Lincoln Park." English, supra, 301 F. 3d at 72.*

The Third Circuit also rejected petitioner's contention that Holt is distinguishable because this case concerns education, a critical function. While recognizing that education is an important function of state and local government, the Third Circuit held that the "extraterritorial power over education exercised by the Boonton Board is itself limited." English, supra, 301 F. 3d at 81. Furthermore, education is not a fundamental right and is no more important or critical than the governmental powers being exercised in Holt -- police powers. Contrary to petitioner's assertion, the decision in Holt did not focus on the nature of the services, but rather on the validity of geographic restrictions on the franchise.

The petitioner continues to assert that the send-receive relationship is analogous to the regional school cases that also exist in New Jersey which allow for proportional representation. See e.g. Township of Marlboro v. Board of Education of Freehold Regional High School, 9 F. Supp. 2d 500 (D.N.J. 1998). However, such analogy is inappropriate. Under New Jersey Law, a regional school district is comprised of several municipalities and is operated by a single board of education and constitutes one voting jurisdiction. N.J.S.A. 18A:13-1. A

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*Holt was followed by the Sixth Circuit Court of Appeals in Mixon v. State of Ohio, 193 F. 3d 389 (6th Cir. 1999), which involved a challenge to an Ohio statute allowing the Mayor of Cleveland to appoint a new school board for the Cleveland School District. Residents living outside of the city argued the statute violated the one person, one vote principle because they did not vote for the mayor. The Sixth Circuit denied the claim on the grounds that the individuals challenging the statute were not residents of the voting district and thus, the one person, one vote principal was not offended.

regional school is an entirely separate entity properly operated by one board.

Unlike, the regional school district, the districts of Lincoln Park and Boonton are, and always have been separate jurisdictions. The residents of Lincoln Park and Boonton exercise their right to elect school board members within their jurisdictions. If this case involved a regional school district, there would be no question as to the right of the residents of the various districts to have proportionate representation on the regional board. See N.J.S.A. 18A:13-1.

There is no tension or conflict between the cases of Hadley and Holt. The Third Circuit Court of Appeals properly distinguished the case of Hadley, which involved a single voting district. The Third Circuit held that the case of Holt was controlling, which involved a decision of this Court wherein the geographic limits on the one person, one vote principle was expressly adopted. The well reasoned opinion of the Third Circuit Court of Appeals below should not be disturbed.

## THE COURT PROPERLY APPLIED THE RATIONAL BASIS TEST

Since the Third Circuit properly determined that "valid geography-based restrictions on voting do not offend the principle of one person, one vote," it properly applied the rational basis test to the send receive statute, N.J.S.A. 18A:38-8.2 to determine its validity. This standard was articulated by this Court in Holt where it held that because Holt residents lived outside the boundaries of Tuscaloosa, the governmental unit at issue, one person, one vote was not implicated and the scheme needed to survive only rational basis review. Holt, supra, 439 U.S. 60 (1978). The court below properly applied this test to Lincoln Park residents who clearly live outside of the boundaries of Boonton.

Under the rational relationship test, courts apply "a very deferential standard, under which a law will be sustained ... even if the law seems unwise or works to the disadvantage to a particular group, or if the rational for it seems tenuous." Romer v. Evans, 517 U.S. 620, 632 (1996). It is well settled that under this standard, states enjoy significant latitude in the design of local governments. English, supra, 301 F. 3d at 82.

The court below specifically recognized that the complexity of financing and management of a statewide public school system mandates that "there will be more than one constitutionally permissible method of serving them within the limits of rationality." English, supra, 301 F. 3d at 82.(quoting Jefferson v. Hackney, 406 U.S. 535, 546-47 (1972)).
The court below also found that:

> the mere fact that the representation scheme might have been crafted with more

> precision...does not mean the current system is irrational, for this Court does not sit to determine whether [New Jersey] has chosen the soundest or most practical form of internal government possible.

English, supra, 301 F. 3d at 81.

The Third Circuit found that indeed New Jersey has legitimate reasons for limiting the representation of Lincoln Park in Boonton Board's decision. For example, Lincoln Park, as a sending district might sever its relationship with Boonton. English, supra, 301 F. 3d at 80. The court also noted that Lincoln Park has other options available to educate its high school students, including forming a regional district with other municipalities, building its own high school or sending its children to a different district. In the Court's view, these options limit Lincoln Park's interest in the Boonton School District. English, supra, 301 F. 3d at 82.

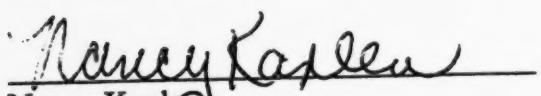
The Third Circuit Court of Appeals properly applied the rational basis test to N.J.S.A. 18A:38-8.2. This standard is the proper one given this Court's holding in Holt, in which this Court held that the application of strict scrutiny is not appropriate, where, as here, two separate voting districts are involved. The court below properly applied this standard in holding that "so long as scrutiny is not implicated, states enjoy significant latitude in the design of local governments." Further, deference is given to the legislature due to "the very complexity of the problems of financing and management a statewide public school system.." English, supra, 301 F. 3d at 82. Thus, the court's holding below is supported by Holt, Hadley and their progeny. Therefore, there is no need for this court to grant the petition for writ of certiorari.

## CONCLUSION

For all the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY

By: 

Nancy Kaplen
Assistant Attorney General
Counsel of Record